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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/607,313 06/28/00 BAKER

B 30687-US

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EXAMINER

TRAN LIEN, T

ART UNIT

PAPER NUMBER

1761

DATE MAILED:

05/08/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

# Office Action Summary

Application No.  
**09/607,313**

Applicant(s)

**Baker**

Examiner

**Lien Tran**

Art Unit

**1761**



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on April 27, 2001 and June 28, 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\*See the attached detailed Office action for a list of the certified copies not received.

- 14) ☒ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☐ Notice of References Cited (PTO-892) 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 19) ☐ Notice of Informal Patent Application (PTO-152)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s). 2,5 20) ☐ Other: \_\_\_\_\_

Art Unit: 1761

1. Claim rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 12 is vague and indefinite. The term “ bristle-like appearance” is indefinite because what would be considered as “bristle-like”? Also, it is not clear what applicant means by “ plastic bristles” and “rubber bristles”; if they are plastic and rubber, how can the bristles be an edible material.

In claim 13, the term “ bristle-like shape” has the same problem as in claim 12.

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over the brochure on “ Paint Pop” in view of Glynn et al and Mochizuki et al.

Art Unit: 1761

The brochure discloses Paint Pop which comprises candy in the shape of a paint brush, a packet comprising candy powder and a paint tray. The candy powder is emptied into the paint tray and the candy is rolled in the paint tray for consumption. The candy has a non-edible handle portion and an edible portion attached to the handle.

The brochure does not disclose the paint tray with the lid, a bristle portion, the different shapes of the coatable utensil and the tray, the different shape of the flowable material in the tray and that the flowable material is luminiferous or gas releasing confectionery.

Mochizuki et al disclose pressurized gas-entrapping candy. (See abstract)

Glynn et al disclose illuminable edible that be soft or hard candy that can be is any various shapes such as eggs, jack-o-lanterns, vampire, witch etcc... The candy is house in a container which can also be in different shapes. ( see column 3 lines 25-33 and the abstract)

It would have been obvious to one skilled in the art to make the pop in the brochure to be of any other shapes to enhance the playful purpose of the product. As shown by the prior art submitted by applicant, lollipop or candy in general comes in many different shapes. It would also have been obvious to include the candies as disclosed by Glynn et al and Mochizuki et al in the Candy Powder packet of the Paint Pop product to give flavor and playful value to the Paint Pop product. Since product such as Paint Pop is targeted to young children, the addition of playful candies coming in different shapes, being illuminated or being gasified will make the product more appealing. The same is true with making the container in different shapes. As to the ingredients and amounts of the flowable material, this can vary depending on the flavor and


Art Unit: 1761

taste desired. It is within the skill of one in the art to determine such parameters. It would also have been obvious to include a lid so that the product will not fall out and to include a holder as a variation to enhance the playful nature of the product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is (703) 308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

May 4, 2001

  
LIEN TRAN  
PRIMARY EXAMINER  
